IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.193 OF 2002

Mormugao Port & Railway
Workers' Union,
a trade union, registered
under the Trade Union Act,
1926 and having its office
at Zaiboon Apartments,
Near Cine El Monte,
Vasco-da-Gama,Goa ...PETITIONER

VERSUS

1. Union of India
(through the Secretary
to the Government of
India, Ministry of
Surface Transport,
New Delhi);

2. The Board of Trustees of
the Port of Mormugao,
a body corporate set up
under the provisions of
the Major Port Trusts Act,
1963, having its office
at Mormugao Harbour,
Mormugao, Goa;

3. Shri A.J. Peters,
residing at Jetty,
Mormugao Harbour,
Mormugao, Goa ... RESPONDENTS.

Shri S.K. Kakodkar, Sr. Advocate, with Shri Joel D'Souza, Advocate,for the Petitioner.

Shri J.S. Vaz, Addl. Central Government Standing Counsel, for the Respondent No.1.

Shri V.B. Nadkarni, Sr. Advocate, with Shri Y.V. Nadkarni, Advocate, for the Respondent No.2.

Shri M.S. Sonak, Advocate for the Respondent No.3.

CORAM : V.C. DAGA &
P.V. HARDAS,JJ.

DATED : JULY 10, 2002.

ORAL ORDER (PER **V.C. DAGA,J.)**

Heard the rival contentions.

2. Perused record.

3. The appointment of the Respondent No.3 Mr. A.J. Peters, Respondent No.3 made by the Central Government as a Trustee on the Board of Trustees of the Port of Mormugao to represent the interest of the labour employed in the Port of Mormugao for the biennium 2002 to 2004 is the subject-matter of challenge in this Petition.

THE FACTS-IN-BRIEF.

The brief facts leading to this petition are as under :-

4. The Petitioner is a Union registered under Indian Trade Unions Act, 1926. By virtue of the Nanda Formula, the Petitioner-Union is entitled to have one person chosen by it as a trustee on the Board to represent the labour employed in the Port of Mormugao. By letter dated 4-2-2002 addressed to

the Secretary, Mormugao Port Trust, the name of Shri A.J.Peters, Respondent No.3 came to be sponsored under the signature of Shri Sandeep Desai, Working President of the Union for being appointed as a Trustee on the Board of the said Port Trust since the Board was to be reconstituted.

5. It appears that after receipt of the said communication, by letter dated 14-2-2002, the Board forwarded the name of Shri A.J. Peters, Respondent No.3 to the Secretary, Government of India, Ministry of Shipping, New Delhi by Speed-Post. The said letter is produced on record by the Board, Respondent No.2,along with their reply. It further appears that in pursuance of the said recommendation, Shri A.J. Peters, Respondent No.3,came to be appointed as one of the Trustees on the Board to represent the interest of the Labour i.e. member of the Mormugao Port & Railway Workers' Union.

6. The Petitioner contends that the Executive Committee of the petitioner/Union had chosen Mr. Peters as President of the Union for 2 years in a meeting held on 14th September 1998. and the said period came to an end on 14th

September 2000 though the tenure of the Managing Committee was of three years.The tenure of the said Managing Committee came to an end on 14th September, 2001. It further appears that some disputes cropped up between the two factions of the Petitioner Union. Both the rival groups started asserting their rights and started projecting themselves as the Office bearers of the Union and ultimately the said dispute culminated in a legal battle and now the litigation in the form of Suit is pending in the Civil Court at Vasco.

7. It further appears that the Petitioner Union vide its letter dated 21st March, 2002 addressed to the Chairman of the Mormugao Port Trust pointed out that Mr. A.J. Peters, Respondent No.3 was never nominated by the Executive Committee of the petitioner Union. In other words, Petitioner objected to the appointment of the Respondent No.3 on the ground that his name was never sponsored by the Executive Committee of the Union and that it had no approval of the Union. However, it appears that by the time the complaint was received by the Port Trust, the name of the respondent No.3 alongwith others was already recommended to the concerned Ministry and the action in pursuance thereof was already

complete. No material is on record to suggest that any attempt was made to approach the Govt. of India, Ministry of Shipping, New Delhi to challenge the appointment of respondent No.3 or seeking his removal from the post of Trustee of the Board.

8. The only material available on record is the copy of the letter written by the Union to the Chairman of the Port Trust dated 21-3-2002 the copy of which was forwarded to the Ministry of Surface Transport, Government of India, who was not concerned with the said appointment. The concerned Department of the Government of India, namely, the Ministry of Shipping, Government of India, is also not a party to the present Petition, who is really concerned with the present appointment and the dispute raised therein. In absence of the proper party before the Court, we are deprived of the advantage of having the views of the said Ministry with respect to the present dispute. Thus no proper party is before this Court to grant effective relief in favour of the Petitioner Union.

9. Having heard the parties at length, at the outset, we must point out that the dispute between the two rival groups asserting their respective rights is very much pending in the Court

of Civil Judge, Junior Division, Vasco-da-Gama in the form of Regular Civil Suit No.46 of 2002. This fact was suppressed by the Petitioners. There is no disclosure of this litigation in the present Petition. This fact came on record through the contesting Respondents; who produced copy of the plaint on record. A perusal of the plaint paras 5, 7, 8 and 9 unequivocally demonstrate that the foundation of the suit is the basis of the present Petition. In this view of the matter, filing of suit assumes importance. The declaration sought in the suit is that the notice issued by the defendant in the suit i.e. Mr. A.J. Peters dated 1-4-2002 convening a General Body Meeting of the Members of Mormugao Port & Railway Workers' Union is without authority of law and ab initio null and void and needs to be quashed and set aside. The basic legal right asserted by the Petitioner Union in the suit and in the present Petition is more or less identical, though the reliefs claimed are different, as such in our view it was obligatory on the part of the Petitioner to disclose this fact of filing suit and pendency thereof to this Court when this Petition was filed. This in our view amounts to suppression of fact. When this fact of filing suit was brought to our notice, we perused copy of the plaint. Para 8 and 9 of the plaint makes out

the case that the defendant i.e. Respondent No.3 herein, unilaterally and arbitrarily suggested his own name for being appointed as Labour Trustee to represent the Union without any authority or approval of the Executive Committee of the Union and this fact came to the knowledge of the Union on 19-4-2002 and immediately its General Secretary wrote a letter to the Chairman of the Port Trust. As against this statement in the plaint a statement is made in the Petition that the letter to the Chairman of the Port Trust was written on 21-3-2002. The copy of this letter is produced on record of the Petition. If this fact came to the knowledge of the Petitioners on 19-4-2002, how could they write letter on 21-3-2002 ? In this backdrop attempt to place twisted facts cannot be ruled out. If the Petitioners were aware of this fact on 21-3-2002, it was expected on their part to approach the appropriate Court to stall the appointment of Respondent No.3 as a Labour Trustee on the presently reconstituted Board. No explanation is to be found in this behalf in the Petition.

10. In the Petition reliance is placed on the certificate issued by the Registrar of Trade Unions dated 29-5-2002 so as to claim that the persons mentioned in the said certificate are the

Members of the ad-hoc Committee entitled to manage the affairs of the Petitioner Union. It appears that subsequent to the issuance of this certificate dated 29-5-2002, a Show Cause Notice dated 19-6-2002 has been issued to Shri Leonard Rodrigues and Shri Jude J.P.S.D'Costa at whose instance this Petition is filed. Mr. Jude J.P.S.D'Costa has affirmed this Petition. The Show Cause Notice required the said persons to offer comments within seven days from the date of the letter as to why the certificate issued in their favour recognizing them as Members of the Ad-hoc Committee should not be withdrawn. This fact has also not been disclosed in the Petition. Petitioner/Union tried to explain that this Show Cause Notice issued by the Commissioner of Labour and Employment & Registrar of the Trade Unions was never received by them. The Affidavit filed in support of the statement is affirmed by Mr.Jude J.P.S.D'Costa. He has,no doubt,made a statement in the Affidavit that neither he nor Mr. Leonard Rodrigues has received this Notice. Beyond this bald statement, nothing is to be found in the Affidavit. It is not their case that addresses of the notices are incorrect. It is also not understood as to on what basis Mr. D'Costa could make a statement on behalf of Mr. Leonard Rodrigues. No statement is to be found in

the Affidavit as to whether he (Mr. D'Costa) made any enquiry from Mr. Leonard Rodrigues in this behalf. No source of information is disclosed in the Affidavit. It is not disclosed how and when he acquired knowledge about non-receipt of this notice by Mr. Leonard Rodrigues. There is no verification to the Affidavit but one clause in the Affidavit makes a positive statement that contents of para 3(b) (i); wherein this statement is made, is based on personal knowledge. How could there be a personal knowledge of the fact which is in the personal knowledge of some other person. It is difficult to comprehend. Whole attempt appears to be to play game of hide and seek. At least, it was expected on the part of the Petitioner Union to file Affidavit of Mr. Leonard Rodrigues in this behalf. No material is to be found as to on what basis this statement has been made in the counter affidavit on behalf of Mr. Leonard Rodrigues. The statement made in this behalf does not inspire confidence of this Court.

11. The minutes of the meeting held between two rival groups of the Petitioner Union on 10-6-2002 in the Office of the Assistant Labour Commissioner, Vasco-da-Gama which have a bearing on the present Petition are also suppressed

from this Court. Paras 9 and 10 of the Minutes read as under:-

" 9. It is agreed that upon signing the agreement on 13.6.2002 as hereinabove mentioned, the letter given to the management on the issue of appointment of the Trustees on the Board of Trustees as per the letter given under the signature of Shri Sandeep Dessai shall be treated as withdrawn. It is agreed that a letter to that effect shall be handed over to the M.P.T. Chairman by Shri Sandeep Dessai to that effect within 24 hrs from the date of signing of the agreement on 12.6.2002.

10. It is agreed that the following shall be three representatives each of the group of signing the agreement.

1.Shri Leonardo Rodrigues	1. Shri A.J. Peter
2.Shri Anthony Fernandes	2. Shri Sandeep Dessai
3.Shri Jude D'Costa	3. Shri Mohiddin Aga.

The above 6 representatives shall meet in the Office of the Asstt. Labour Commissioner, Vasco before the Commissioner, Labour & Employment on

13.6.2002 at 10.30 a.m.

SIGNATURES OF THE PARTIES

Leonardo Rodrigues Sd/- A.J.PETERS Sd/-
Anthony Fernandes Sd/- SANDEEP K.DESAI Sd/-
Jude D'Costa Sd/- Mohiddin Agha Sd/-
10/6 "

We feel that the above fact having direct bearing on the dispute raised in the Petition ought to have been disclosed in the Petition which was a temporary workable solution or arrangement found out by the Assistant Labour Commissioner to settle dispute between the two warring groups of the Petitioner Union. This fact has also been suppressed from this Court and the oral explanation sought to be offered was that this fact was irrelevant. We do not subscribe to this view.

12. Even if the above aspect of the matter is ignored, still one more circumstance emanating from the letter dated 28-6-2002 circulated under the signature of one Shri Anthony Fernandes needs to be taken into account. From this letter it appears that it was well within the knowledge of the Union as to under whose signature and authority the name of the Respondent No.3 was forwarded to the Port Trust for being appointed to the post of Trusteeship. The letter makes it clear that it was under the signature of Mr. Sandeep Desai, Working

President of Union. This fact has also not been disclosed in the Petition on the specious ground that the Petitioners were unaware of this fact. Attempt to suppress true facts is writ large.

13. At this juncture it will not be out of place to mention that Writ Petitions are decided on the basis of statements on Affidavits. If the Petition contains misleading, inaccurate statements or there are suppressions of material facts, the Court is not bound to entertain the Petition. In **Trilokchand Motichand v. S.P. Munshi** (AIR 1970 SC 898), the Supreme Court held that the petitioner had no right to move the Court for enforcement of his fundamental right as the petition suffered from suppression of facts. In the **State of Haryana & ors. v. Karnal Distillery (AIR 1977 SC 781), the** Supreme Court refused to grant relief on the ground that the appellant had misled the Court. This Petition is thus liable to be dismissed on the short ground that the Petitioners have not approached the Court with clean hands and suppressed material facts with due knowledge. Hence this is not a fit case to exercise writ jurisdiction.

14. Both groups are claiming to be the

Office bearers of the Union. Serious disputes prevail amongst two groups and both of them are making rival allegations against each other and are holding General Body meeting behind the back of each other. The civil disputes are pending in the Civil Court. Some disputes are pending before Registrar of Trade Union and also before the Commissioner of Labour & Employment. Each group is trying to score over another. In this backdrop it will not be out of place to refer to one Public Notice which came to be published during the pendency of this Petition under the signature of Mr. J.P.S. D'Costa, projecting himself to be General Secretary of the Petitioner Union, wherein a statement has been made by him that the Bombay High Court has accepted the Petition bearing No.193 of 2002, i.e. the present Petition. When it is brought to the notice of this Court an affidavit is filed to the effect that in the said insertion the words used "accepted by the Court" came to be used inadvertently by mistake on the part of the person issuing the Notice. If the entire conduct of Mr.Jude J.P.S. D'Costa in the above extracted circumstances is seen, the Affidavit filed with a view to tender some explanation would hardly inspire any confidence of any judicial mind that it was 'by mistake'. As a matter of fact, during the

pendency of this Petition the Petitioner Union should have refrained from issuing such a notice. It should not have been issued by the Petitioner Union. But whole attempt was to score over other group. Thus, looking to the conduct of the Petitioner Union on the above canvas we are not inclined to entertain this Petition. The process of law is being used to settle disputes between two rival groups on suppression of facts.

15. The present dispute has also another dimension, one group represented by Respondent No.3 claims that as per Clause 12 of the Constitution of the Union, the same Executive Committee can continue to function till new one is appointed. Accordingly, inspite of expiry of the term of the Executive Committee on 14-9-2001, the same Body continued for want of fresh election. As against this the Petitioner Union represented by another group asserts that on 27th March 2002 General Body met to appoint Ad-hoc Committee as per Clause 11 of the Constitution and unanimously resolved and nominated Mr. Sandeep Desai to the post of President of the Union for the remainder term till annual general elections of the Union were held in accordance with its Constitution. This statement finds support from the plaint para (11) of the

suit. The extracts of this meeting dated 27-3-2002 are produced on record not by Petitioner Union but by the Respondents. In order to prove manipulation or falsity of this alleged meeting dated 27-3-2002 on document namely letter dated 6-4-2002 addressed to the Registrar of the Trade Unions is produced on record, wherein Mr. Sandeep Desai alongwith other signatories alleged that they were unaware whether or not actually such meeting had really taken place on 27-3-2002. Mr. Sandeep Desai, to whom Petitioner Union claims to have appointed as President of the Union himself is alleging this as an act of fraud and misrepresentation on the part of Mr. Leonard Rodrigues. Mr. Sandeep Desai, President of the Petitioner Union has alleged that as a fact no such meeting took place on 27-3-2002. In order to get over this situation Petitioner Union is trying to project another meeting of the General Body alleged to be dated 23-4-2002, wherein one Mr. Anthony Fernandes alleged to be substituted in place of Mr. Sandeep Desai. In this backdrop possibility of fabrication of documents cannot be ruled out. On the basis of such disputed documents or which are under cloud writ jurisdiction cannot be exercised.

16. Another attempt was made by the

Petitioners to rely upon the certificate dated 29-5-2002 issued by the Registrar of Trade Union certifying the names of the Ad-hoc Committee to show that it was recognised by the authorities under Trade Union Act,but this certificate itself is also under cloud in view of Show Cause Notice dated 19-6-2002 issued by the Registrar of Trade Unions.

17. The Petition, thus, looking to the entire scenario sketched hereinabove, involves number of disputed facts which cannot be gone into in the writ jurisdiction of this Court. The writ Court is not expected to enter upon a determination of question which require an elaborate examination of evidence to establish the right to enforce for which the writ is claimed as held by Apex Court in the case of **(Mahint) Moti Das vs. S.P. Sahi** – AIR 1959 SC 942.

18. It is no doubt true that the writ Court is not deprived of its jurisdiction to entertain a Petition under Article 226 merely because in considering the petitioner's right to relief some question of fact needs to be determined. In a petition under Article 226 writ Court has a jurisdiction to try issues both of fact

and law. The exercise of jurisdiction is discretionary. It has to be exercised on sound judicial principles. Considering this petition from that angle, in our opinion, this is not a fit case warranting exercise writ of jurisdiction in favour of the Petitioner for number of facts enumerated hereinabove.

19. Now, turning to the action of the Respondent No.2, Board, we do not think any fault can be found at their doorstep. It is a case of the Petitioners themselves that Mr. Sandeep Desai was a President of the Union unanimously elected in a meeting held on 27th March 2002. The first name of Respondent No.3 was sponsored by Mr. Sandeep Desai under his signature in the capacity of Working President of the Petitioner-Union is not in dispute. The second name was of Mr. Leonard Rodrigues, which in no circumstance could be without his consent. He never came forward to dispute his consent. He was a second choice for the post of Trustee of the Board. As per Clause 19(A) of the Constitution of Union, the Working President is entitled to correspond in that capacity. The letter-head used for lodging protest with the Chairman of the Port Trust dated 21-3-2002 carried the name of Mr. Sandeep Desai as Working

President. By the time dispute in the Union was sought to be brought to the notice of the Chairman of the Port Trust by this letter dated 21-3-2002 the names of the persons who were to be nominated on the reconstituted Board were already forwarded to the concerned Ministry. So the things were beyond the control of the Chairman of the Port Trust, as such no fault can be found with the action of the Chairman of the Port Trust. No attempt was made to stall the appointment of Respondent No.3 by taking proper legal action well within reasonable time. The delay in this behalf has not been explained in the Petition.

20. No demand appears to have been made to the Ministry of Shipping, Government of India, New Delhi: to cancel the appointment of Respondent No.3. In absence of any demand for justice, no Mandamus can be asked for is the settled principle of law of Writs. As a general rule, Order will not be granted unless the party complained of has known what it was, he was required to do, so that he had the means of considering whether or not he should comply with and it must be shown by evidence that there was distinct demand of what which the party is seeking the Mandamus desires to enforce, and the demand was met by a refusal. In **State of Haryana &**

another v. Chanan Mal etc. (AIR 1976 SC 1654), it was held that he who applies for a Writ of Mandamus, should in compliance with the well known rule of practice, ordinarily, call upon the authority concerned to discharge its legal obligations and to show that it has refused or neglected to carry it out within a reasonable time before applying to a Court for such an order. In this case, the second prayer is a prayer for a Writ of Mandamus.

21. On the top of these defects even the Ministry of Shipping, Government of India, New Delhi is not a party to the Petition. Thus looking to the entire canvas of the case, this is not a fit case warranting consideration in writ jurisdiction.

22. The Petition is thus dismissed in limine with no order as to costs.

V.C. DAGA,J.

P.V. HARDAS,J.

ac.